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Technology Center 2100

Paper No. 15

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In re Application of: Richard D. Cappels et al.)
Application No. 09/160,503)
Filed: September 24, 1998)
For: APPARATUS AND METHOD FOR)
HANDLING SPECIAL WINDOWS)
IN A DISPLAY)

**DECISION ON PETITION
UNDER 37 CFR § 1.181 TO
INVOKE SUPERVISORY
AUTHORITY**

This is a decision on the petition under 37 CFR §1.104, filed November 30, 2000, which is being treated as a petition under 37 CFR 1.181 requesting withdrawal of the finality of the Office action (Paper No. 9) mailed on July 27, 2000.

CASE HISTORY

Petitioners filed a proposed response to Paper No. 9 on October 30, 2000 (Paper No. 10). In the proposed response, petitioners contended that the Finality was premature and presented arguments traversing the rejections of record. The Examiner responded to applicants arguments with an Advisory action (Paper No. 11) on November 09, 2000 and did not withdraw the finality of the previous Office action (Paper No. 9).

Petitioner filed the instant petition on November 30, 2000 contending that the final rejection issued by the Examiner in Paper No. 9 failed to address petitioners argument between pages 11-13 of his remarks filed June 12, 2000 (Paper No. 8).

RELIEF REQUESTED

The instant petition treated under 37 CFR §§ 1.181 requests the following relief:

- A. Withdrawal of the Finality of the rejection of claims 5-10, 12, 25-30, 32, and 41-43 contained in Paper No. 9.
- B. Issuance of a new Office action explaining the new position of the Examiner.

OPINION

Whether the Examiner has established a prima facie case of obviousness and whether the rejections over art are correct are appealable issues not subject to petition. 37 CFR §§ 1.181(a) states:

§ 1.181 Petition to the Commissioner.

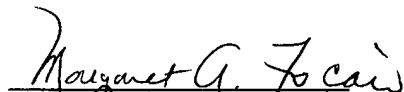
(a) Petition may be taken to the Commissioner: (1) From any action or requirement of any examiner in the ex parte prosecution of an application *which is not subject to appeal to the Board of Patent Appeals and Interferences or to the court*; (2) In cases in which a statute or the rules specify that the matter is to be determined directly by or reviewed by the Commissioner; and (3) To invoke the supervisory authority of the Commissioner in appropriate circumstances. For petitions in interferences, see § 1.644. (*Emphasis added*)

Thus, the correctness of the art rejections is not subject to review by Petition. Therefore, all remedies requested hinge solely on the determination of the propriety of the finality of Paper No. 9.

A careful reading of the final rejection indicates the Examiner has fully developed a position on the issues in the action. Furthermore, the issues have been presented to Petitioner in multiple Office communications before and including the final rejection. Further, the examiner has clearly set forth his rejection of claims 5-10, 12, 25-30, 32, and 41-43 including reasons for motivation on pages 7-11 of the Final office action (Paper No. 9).

The examiner's holding of Finality with respect to the rejections of record in Paper No. 9, is correct and consistent with Office policy and practice. Accordingly, the Petition is **DENIED**.

If the petitioner desires further review of the Director's Decision, applicant should consider filing a Petition for Review of the Director's Decision under 37 CFR §1.181(a)(3).



Margaret A. Focarino, Director

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